IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISC. APPLICATION NO. 153 OF 2002

State,
Through Margao Town
Police Station,
Margao, Goa. ... Applicant.

VERSUS

Shri Anand Naik,
s/o Baburao Naik,
34 years old, married,
businessman and residing
at H.No.58, Near Krishna
Temple, Ecoxim, Bardez,
Goa. ... Respondent.

Mr. A.P. Lawande, Public Prosecutor for the State/ Applicant.

Mr. S.D. Lotlikar, Senior Advocate with Ms. S. Samanth, Advocate for the Respondent.

CORAM: D.G. DESHPANDE, J.

DATE: 16TH JANUARY, 2003.

ORAL JUDGMENT:

Heard Mr. Lawande for the State and Mr. Lotlikar for the Accused.

2. The accused was facing trial along with another accused for offence under Sections 120-B, 302 and 307 I.P.C. The alleged incident had taken place on 11.11.2001 and the Sessions Case Number was 7/2002.

3. Earlier bail applications of the accused were rejected. Thereafter charge sheet was filed. The Trial Court framed charge and examined one witness

and the matter was adjourned as muddemal property could not be produced. At that time the accused applied for bail and the same was granted to him by the Trial Court. Hence this application for cancellation of bail.

4. I have heard Mr. Lawande and Mr. Lotlikar at length. Mr. Lawande pointed out that once the charge is framed for a serious offence, it is an indication that the Court was satisfied about the existence of prima facie case against the accused and therefore when one witness was examined by the prosecution, it was not at all the stage for appreciation of the offence even for the purpose of granting bail. He has contended that even though the offence was committed in 2001 and the Sessions Case was of 2002, the trial has commenced expeditiously and was likely to be continued without any unreasonable delay. He relied upon the judgment of the Supreme Court in **State of Maharashtra v. Ritesh s/o Vassudeo Wanjari** reported in A.I.R. 2001 S.C., 1310, wherein the bail granted by this Court in a case under Sections 302, 109, 120B, 364, 397, 201 read with Section 34 of I.P.C. was cancelled by the Supreme Court holding in para 6 that once the final charge-sheet has been filed in the trial Court, the High Court, under the normal circumstances, should

have permitted the respondent to get a verdict of his innocence or involvement from that Court under Chapter XVIII of the Code of Criminal Procedure. No exceptional ground has been made out in the instant case, to depart from such an usual established procedure and hence the order was subsequently set aside.

5. On the other hand, Mr. Lotlikar contended that the bail order was passed on 3rd September, 2002. Application before this Court was filed on 25th November, 2002 mainly on the following grounds:-

Firstly that there was delay in filing this application for cancellation of bail.

Secondly that there were no allegations that the bail has been misused by the accused.

Thirdly according to him the trial was interrupted because the muddemal property was not produced; and

Fourthly that the Trial Judge was transferred and the assistant Judge was looking after the matters and therefore according to him the trial was not likely to be completed as expeditiously as possible

and it was bound to take time and further when there was no offence of conspiracy except for the testimony of one witness, the Trial Court was justified in allowing the application for bail.

6. I do not find substance in any of the submissions. There is no delay in filing the application for cancellation of bail subsequent to the conduct of the accused because the challenge here is to the very order of granting bail and the logic applied by the Magistrate in granting bail.

7. In fact as rightly argued by Mr. Lawande, charge was framed under Sections 120B, 302 and 307 I.P.C. which clearly means that the Magistrate was satisfied about the existence of prima facie case which was likely to result in conviction of the accused in respect of those charges. After having done that and after having examined the complainant, it was highly improper on the part of the Trial Court to assess the evidence again for the purpose of granting bail. Even otherwise if it is a case of conspiracy, then admittedly in very rare cases any direct evidence of conspiracy is to be proved from circumstances and, as such, it was improper on the part of the Trial Court to assess the evidentiary value of the witnesses for the purpose of granting

bail.

8. Therefore on both counts, regarding the stage of granting bail and on merits, the order is totally perverse and the same is quashed and set aside. The accused to surrender before the Trial Court and if he fails to surrender, he will be taken into custody by legal process.

D.G.DESHPANDE,J.

sl.